

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21

GLOBE AVIATION SECURITY CORPORATION¹

Employer

and

Case 21-RC-20380

SAFETY OFFICERS UNION

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. Petitioner is a labor organization within the meaning of Section 2(5) of the Act and seeks to represent certain employees of the Employer.

4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The Employer contends that the National Labor Relations Board (Board) lacks jurisdiction under Section 2(2) of the National Labor Relations Act (Act). The Employer asserts that it is subject to the Railway Labor Act (RLA) because its employees perform work traditionally performed by air carriers, and that this work is controlled by air carriers. Conversely, the Petitioner contends that the Employer has not demonstrated that an air carrier maintains a sufficient degree of control over the employees' functions to preclude the Board from asserting jurisdiction.

Section 2(2) of the Act provides that the term "employer" shall not include "any person subject to the Railway Labor Act." 29 U.S.C. §152(2). Similarly, Section 2(3) of the Act provides that the term "employee" does not include "any individual employed by an employer subject to the Railway Labor Act." 29 U.S.C. §153(3). The RLA, as amended, applies to rail carriers and to:

¹ The Employer's name appears as corrected during the hearing; however,

[e]very common carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail for or under contract with the United States Government, and every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner or rendition of his service. 45 U.S.C. §151 First and 181.

The record indicates that the Employer has separate contracts with two airlines, American Airlines, Inc. and American West Airlines, Inc., under which terms the Employer provides pre-board screening services at John Wayne Airport located in Santa Ana, California.² The Employer employs pre-board screeners to perform the pre-board screening services. The screeners provide security at pre-boarding security checkpoints, which includes operating X-ray, metal detection and explosive detection equipment. The equipment used by the screeners is owned and maintained by the airlines. The screeners report any security breaches to their supervisor who in turn contacts the local law enforcement authorities and the airlines.

The terms and conditions of employment for the screeners are controlled by the contract as well as specification documents supplied by the Federal Aviation

the petition was not amended.

² Employer Exhibit 1 contains a copy of the contract, absent financial data, between the Employer and American Airlines. The record indicates that the Employer's contract with American West contains similar contractual provisions, with the exception of financial data, as the American Airlines contract.

Administration (FAA). The specification documents consist of FAA Regulations 107 and 108, the Air Carriers Security Standard Procedures (ACSSP), and the Checkpoint Operation Guide (COG). Together, the specifications establish minimum job requirements, training and testing requirements, job duties and responsibilities, performance standards, and operating procedures for the security checkpoints. The contract requires that the Employer comply with all FAA specifications and it outlines the obligations of the Employer and the airlines. Keith Johnson, the Employer's general manager, testified that the Employer cannot deviate from the specifications, or from the contract requirements.

The contract requires that the Employer keep complete and accurate financial records pertaining to its contractual relationship with the airlines. The airlines have the right to inspect, examine, audit and copy the records.

The record indicates that the Employer interviews, hires, disciplines and terminates the screeners. The Employer also sets the screeners' schedules and authorizes schedule changes. In addition, the contract requires that the screeners wear uniforms containing the Employer's name, and that they be groomed and attired in a manner acceptable to the airlines.

The Employer completes an annual performance review for each screener. Johnson testified that the Employer provides the airlines with copies of all performance evaluations and that the airlines can require that the Employer remove screeners who do not meet performance standards. However, Johnson testified that no action had been taken against any screener following the Employer's submission of the evaluations.

The Employer determines the salary of each screener and bills the airlines a contractually determined amount per screener. The Employer also provides benefits for the screeners.

The Employer is required to provide ongoing and recurring training for the screeners and implement drug and alcohol-testing programs. The airlines monitor and test the screeners' training levels. If the airlines determine that the training is insufficient, the Employer is required to conduct additional training. Training takes place at the airlines' facilities.

The record indicates that the Employer is not a common carrier by air or rail engaged in interstate commerce. The National Mediation Board (NMB), which administers the RLA, has stated that where, as here, the Employer is not a common carrier by air or rail, it applies

a two-part test to determine whether the employer and its employees are subject to the RLA. Aviation Safeguards, 27 NMB 581 (2000); Ogden Aviation Services, 23 NMB 98 (1996).

Under its two-part test, the NMB first determines whether the employer provides services traditionally performed by rail or air carriers. Second, the NMB determines whether the employer is directly or indirectly owned or controlled by, or under common control with, a rail or air carrier. Id.

The first part of the NMB test is referred to as the "function" test. Id. NMB decisions have found that security and screening services are a function traditionally performed by air carrier employees. See e.g. International Total Services, 20 NMB 537 (1993); Andy Frain, Inc., 19 NMB 161 (1992); Globe Security Systems Company, 16 NMB 208 (1989); International Total Services, 16 NMB 44 (1988); New York Interstate Service, Inc., 14 NMB 439 (1987); Ground Handling, Inc., 13 NMB 116 (1986); Allied Maintenance, 13 NMB 255 (1986). Since the record indicates that the screeners here perform security and screening services, it is concluded that the Employer's screeners satisfy the NMB's "function" test.

The second prong of the NMB's two-part test is referred to as the "control" test. Aviation Safeguards,

27 NMB 581 (2000); Ogden Aviation Services, 23 NMB 98 (1996).

In examining control, the NMB focuses on, inter alia, the carriers' role in the entity's daily operations, and the entity's employees' performance of services for the carrier. The NMB also examines the carriers' role in employing and terminating employees, the degree to which the carriers supervise the entity's employees, the degree to which the employees are held out to the public as carrier employees, and the degree of carrier control over employees' training [citations omitted]. Aviation Safeguards, 27 NMB at 234.

The record reveals many factors which establish that the carriers herein "control" the Employer's employees. Specifically, the airlines have the right to inspect and audit the Employer's books and records. The Employer submits all performance evaluations to the airlines. The airlines test the screeners and require that the Employer re-train anyone who fails the tests. Training is conducted at the airlines' facilities, and the airlines own the facilities and equipment utilized by the screeners. The airlines require that the screeners wear Employer uniforms and that they be groomed and attired in a manner acceptable to the airlines. The airlines require that the Employer implement drug and alcohol-testing programs. Moreover, the airlines require that the Employer comply with all FAA regulations and specifications. Finally, the airlines can

require that the Employer remove any screeners who fail to meet performance standards.

The Board has recently indicated that required drug and alcohol-testing programs, required uniforms, and a requirement that the employer remove employees from service at the airlines' request are important considerations and tend to demonstrate airline control over an employer's employees. See Globe Aviation Services, 334 NLRB No. 34 (2001).³ The presence of these same factors here supports a conclusion that the airlines control the Employer's pre-board screening function.

The Petitioner argues that there are a number of factors which demonstrate that the airlines do not control the screening function. First, the Petitioner notes that the airlines' employees do not supervise the screeners and that there is no interaction between the screeners and the airlines' employees. Second, the Petitioner states that the screeners do not perform services on or near aircraft owned by the airlines. According to the Petitioner, these factors indicate that the airlines do not have sufficient control over the screeners.⁴

³ In Globe Aviation Services, the Board concluded that the Employer, who contracted to provide cleaning services for American Airlines at Logan International Airport in Boston, Massachusetts, satisfied the NMB's "function" and "control" tests. The Board held that the Employer was under the jurisdiction of the RLA and affirmed the Regional Director's dismissal of the petition.

⁴ In support of its argument, Petitioner cites Globe Aviation Services, 334 NLRB No. 34 (2001); D and T Limousine Services,

None of the cases cited by the Petitioner require airline employee supervision of the other employees, interaction between the airline's employees and the other employees, or that the services be performed on or near aircraft. Instead, the cases indicate that these are merely some of the factors to consider in deciding the issue of control. Accordingly, the cases cited do not support the Petitioner's contention.

Based on the record as a whole, as well as the NMB and Board cases cited infra, it is concluded that the airlines herein have substantial control over the Employer's operations, and that accordingly, the airlines "control" the work performed by the screeners.

Given these conclusions that the NMB's "control" and "function" tests are satisfied, it is further concluded that the Employer is under the jurisdiction of the Railway Labor Act and not the National Labor Relations Act. I shall, therefore, dismiss the petition.

ORDER

It is HEREBY ORDERED that the petition be, and the same hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this

328 NLRB 769 (1999); Evergreen Aviation Ground Logistics Enterprises,

Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 10570. This request must be received by the Board in Washington by 5 p.m., EDT, on October 16, 2001.

DATED at Los Angeles, California, this 2nd day of October 2001.

/s/Victoria E. Aguayo
Victoria E. Aguayo
Regional Director, Region 21
National Labor Relations Board

133-8100; 177-1683-7500; 177-2484-7500; 240-6737